IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 259 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF THAKORDAS MULCHAND RAJDEV

Versus

MAGANLAL T BHAVSAR

Appearance:

1. Civil Revision Application No. 259 of 1986

MR SURESH M SHAH for Petitioner No. 1-1/7

MR NK MAJMUDAR for the Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/10/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947 (hereinafter referred to as 'the Rent Act') arises from the judgment and order dated 15th March, 1985 passed by the learned Assistant Judge, Rajkot in Regular Civil Appeal No.71/1980. The petitioners before this Court are the heirs and legal representatives of the respondent - plaintiff.

The premises in question is a shop situated at Virpur, District Rajkot. The plaintiff instituted Regular Civil Suit No.333/1977 in the Court of Civil Judge (J.D.), Jetpur for recovery of the possession of the suit premises and the arrears of rent. The plaintiff urged that the suit shop was leased to the defendant for a monthly rent of Rs.45=00; that the defendant was in arrears of rent since 1st August, 1975 and; that the suit shop was required by the plaintiff for his personal and bonafide use.

The suit was contested by the defendant by filing written statement (Ex.12). Notice of demand as envisaged under sub-section (2) of Section 12 of the Rent Act (Ex.23) was given to the defendant on 17th April, 1976. The suit notice was replied to by the defendant on 22nd April, 1976 (Ex.26). The defendant also raised dispute as to the standard rent by filing Standard Rent Application No.13/1976 on 1st May, 1976. The defendant thus, within one month from the date of the receipt of the suit notice (Ex.23), raised dispute as to the standard rent by making application under Section 11(1) of the Rent Act. According to the defendant, the standard rent of the suit shop was Rs.10=00 per month. On 3rd December, 1977, the learned trial Judge made interim order on Standard Rent Application No.13/1976 as follows: (as gathered from Application Ex.77).

> "The applicant to deposit the rent at the rate of Rs.25=00 from 1st August, 1975 and he should deposit further rent regularly"

The defendant filed statement (Ex.32) indicating the amount of rent deposited by him in the Court till 4th August, 1979.

The learned trial Judge, under the judgment and order dated 7th July, 1980, was pleased to hold that the defendant was not regular in making payment of interim standard rent as ordered by the Court. The learned trial Judge held that the defendant had forfeited his right to protection under Section 12(3)(b) of the Rent Act and was pleased to pass decree for possession. The trial Court also fixed the standard rent at Rs.20=00 per month. As

to the requirement of the suit shop by the plaintiff for personal use, the Court held in favour of the defendant.

Feeling aggrieved by the decree for possession passed by the trial Court, the defendant preferred Regular Civil Appeal No.71/1980 in the Court of Assistant Judge, Rajkot. The learned Assistant Judge, Rajkot was pleased to allow the appeal under the impugned judgment and order dated 15th March, 1985. Feeling aggrieved, the heirs and legal representatives of the plaintiff have preferred the present Revision Application.

It may be noted that as to the requirement of the suit shop by the plaintiff for his personal use, the trial Court held in favour of the defendant. The plaintiff did not challenge the said finding by preferring appeal against the same. The plaintiff did not prefer cross-objection in the appeal preferred by the defendant either. Thus, the finding as to the personal requirement of the suit shop by the plaintiff has become final. Nonetheless, the learned Assistant Judge considered the claim for possession made by the plaintiff on the ground of reasonable and bonafide requirement and held against the plaintiff. It is, therefore, not open now for the petitioners to seek recovery of possession of the suit shop on the ground of reasonable and bonafide requirement by the plaintiff.

As to the payment of interim standard rent pending the trial, the learned Assistant Judge has proceeded on the footing that "no standard rent was fixed by the trial Court at interim stage". The learned Assistant Judge was of the opinion that since the standard rent was fixed by the learned trial Judge in the final judgment delivered in the suit, the defendant was not required to make payment of rent pending the trial. Besides, the learned Assistant Judge has also relied upon the amended Section 12(3)(b) of the Rent Act and has held that "according to the amended Section 12(3)(b) [as amended by Gujarat Act 7 of 1985], the defendant was not required to pay rent regularly so as to earn protection under Section 12(3)(b) of the Rent Act and proceeded further to set aside the decree for eviction passed by the trial Court.

To me it appears that the learned Assistant Judge has committed two-fold error; first, the learned Assistant Judge has proceeded on the basis that no interim standard rent was fixed by the trial Court, which is factually incorrect. As recorded hereinabove, on 3rd December, 1977, the learned trial Judge had, under the

powers conferred upon him under Section 11(3) of the Rent Act, fixed the interim standard rent at Rs.25=00 per month and had ordered the defendant to make payment of rent with effect from 1st August, 1975. Second, the learned Assistant Judge has proceeded on the footing that since the amendment of Section 12(3)(b) of the Rent Act (under Gujarat Act 7 of 1985), the defendant was not required to make regular payment. The Division Bench of this Court in the matter of BAI SAKARBAI DEVRAJ V/S. IBRAHIM ABDUL [1994(2) G.L.H. 27] has specifically held that the amended Section 12(3)(b) of the Rent Act shall have a prospective effect i.e. the amended sub-section shall apply to the suits instituted after the effective date of amendment. Indisputably in the present case the suit was instituted long before the effective date of the said amendment. The law in respect of Section 12(3)(b) of the Rent Act (as it stood prior to its amendment under Gujarat Act 7 of 1985) is well settled i.e. even pending the trial and the appeal a tenant is required to make payment of rent regularly every month as and when it falls due. In the above set of facts, it is required to be examined whether the defendant made regular payment of interim standard rent as was ordered by the Court and whether he made payment of standard rent as fixed by the trial Court, pending the appeal, regularly.

As for the payment of rent pending the appeal, the learned Assistant Judge has not considered it at all, probably because the learned Assistant Judge was of the opinion that regular payment was not envisaged under Section 12(3)(b) of the Rent Act as amended under Gujarat Act 7 of 1985. The learned advocates also are unable to render assistance on the issue.

However, I am of the view that once the trial Court had fixed the interim standard rent in exercise of power conferred upon it under Section 11(3) of the Rent Act, it was the duty of the defendant to pay the interim standard rent regularly every month. Explanation to Section 12 provides, inter alia, that in case where an application is made under sub-section (3) of Section 11 of the Rent Act and the defendant pays or tenders the amount of rent or permitted increases specified in the order made by the Court, the tenant shall be deemed to be ready and willing to pay the rent. Thus, Section 12(1) read with the explanation to Section 12 of the Rent Act would mean that if the tenant, after the Court fixes the interim standard rent, pays the arrears at the rate specified by the Court and also pays/deposits future rent at that rate regularly pending the trial, he should be considered to be ready and willing to pay the rent. In

the present case, the trial Court had in no uncertain terms fixed the interim standard rent at Rs.25=00 per month and had directed the defendant to pay all the arrears since 1st August, 1975 and to go on making regular payment accordingly. The said order was complied with by the defendant partially i.e. it appears that pursuant to the said order the defendant deposited a sum of Rs.725=00 on 12th December, 1977. Thus, the defendant deposited the amount of the arrears of rent from 1st August, 1975 till 31st December, 1977. The defendant was also required to pay/deposit the rent regularly thereafter. The statement (Ex.32) filed by the defendant reveals that the defendant failed to discharge his obligation to pay the rent regularly. The defendant did not pay/deposit the interim standard rent fixed by the Court i.e. Rs.25=00 every month. Such amount has been deposited at an interval of few months at the end of such interval. Where the defendant, pending the trial, fails to deposit the interim standard rent fixed by the Court regularly, in my view, he can not be said to be ready and willing to pay the rent as envisaged under Section 12(1) of the Rent Act. The learned trial Judge was, therefore, right in passing the decree for possession. The learned Assistant Judge has proceeded on an erroneous assumption of both, the fact and the law.

I, therefore, allow this Revision Application. The judgment and order dated 15th March, 1985 passed by the learned Assistant Judge, Rajkot in Regular Civil Appeal No.71/1980 is quashed and set aside. The judgment and decree dated 7th July, 1980 passed by the learned Civil Judge (J.D.), Jetpur in Regular Civil Suit No.333/1977 is restored. Rule is made absolute with costs.

The learned advocate Mr.N.K.Majmudar requests that the operation and execution of this order be stayed for a period of three weeks. The request is granted. The operation and execution of this order shall remain stayed till 1st December, 2002, on condition that the defendant pays the rent up-to-date and makes the future payment regularly every month.

(Ms. R.M. Doshit, J.)

/sakkaf